

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 12681, of Paul Levy, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Sub-section 7104.2 to change a non-conforming use from a retail book store to a retail book store with nine mechanical amusement devices (first floor) in the C-4 District at the premises 918 - 14th Street, N.W. (Square 218, Lot 814).

HEARING DATE: August 16, 1978
decision date: October 4, 1978

FINDINGS OF FACT:

1. The subject property is located on the west side of Fourteen Street, N.W., between Eye and K Streets and is known as 918 - 14th Street, N.W. It is in a C-4 District.

2. To the north of the subject property and adjacent to the subject premises and located in the same building there is a liquor store. Further north there are two adult book stores and a valet shop. A drug store is on the first floor of the Ambassador Hotel on the southwest corner of 14th and K Street. All of the above are in the C-4 District. To the east across 14th Street is Franklin Square in the C-4 District. To the south there is an underground parking garage entrance followed by an office building with a Rodman's drug and liquor store on its first floor in the C-4 District. To the west there is a fifteen foot wide alley followed by the rear entrances to various commercial establishments in the C-4 District.

3. The property is rectangular in shape and consists of 1,800 square feet of land area. The site is developed with a two story brick and concrete building. At the time of the field inspection by the Municipal Planning Office there were signs on the exterior of the building near the entrance which read "Movies, Giant Screen Adult Movies, 25¢, you must be 21." The interior layout of the premises consisted of adult books for sale in the front of the store with nine movie machine booths each showing 2 1/2 minute segments of film. These machines are situated to the rear along the north wall of the store. Several of the machines were in operation at the time of the field inspection.

4. The applicant seeks permission to change a non-conforming use from a retail book store to a retail book store with nine mechanical amusement devices that are sexually oriented.

5. The book store was made non-conforming by the Zoning Commission Order No. 188 effective December 16, 1977. That Order among other items, controls the location of sexually oriented business establishments, namely, that said establishments shall not be established within three hundred feet of another sexually-oriented establishment. In this instance there are two other sexually oriented business establishments within three hundred feet of the subject location.

6. As to the subject premises a Certificate of Occupancy number B-11386, was issued on April 30, 1958, to Nathan Shapiro for the "Retail Sales of Newspapers, Periodicals, Souvenirs, Shoe Shine Parlor, Greeting Cards, Mechanical Amusement Machines, and Laminating Work on Small Articles."

7. On August 20, 1963, a Certificate of Occupancy, No. B-42327, was issued to Nathan Shapiro for "Retail Sale Newspaper, Periodicals, Souvenirs, food products, Shoe Shine, Greeting Cards, Mechanical Amusement Machines, Laminating Work on Small Article."

8. On June 24, 1971 a Certificate of Occupancy No. B-78687 was issued to Jacob Kramer for a "Retail Book Store."

9. One day after the above Certificate was issued, on June 25, 1971, and application was filed for a Certificate of Occupancy on behalf of Denmark Cut-Rate Books by Jacob Kramer to correct the June 24, 1971 Certificate of Occupancy by listing the correct use as Book Store - Amusement Arcade. No Certificate of Occupancy was ever issued. It appears that there is no direct evidence as to why the Certificate of Occupancy was not issued. The District of Columbia Government took no action on the application to correct the former Certificate of Occupancy. It is still pending.

10. Mr. Kramer the applicant for the Certificate of Occupancy on June 25, 1971, died in 1977. The business is now in the name of Denmark Publications Inc., which is owned by Mrs. Ruby Kramer, Jacob Kramer's wife. The Zoning Administrator advised the Board and the Board finds that if Mr. Kramer were still alive, and if the original application had been made in the corporate name, a Certificate of Occupancy would be issued based on the application from 1971 on the regulations then in effect.

11. The book store and newstand with mechanical amusement devices has been operating at the subject premises from April 30, 1958 to date. Each year since 1958 the applicant had applied for, paid for and received a D.C. License to operate mechanical amusement machines at the subject location.

12. In October, 1977 the applicant received by mail an application for a D.C. License for a mechanical amusement machine. The application for a license was completed and mailed together with the fee for nine machines. In November, 1977 the application and check was returned on the grounds that the Certificate of Occupancy of June 24, 1971 did not list amusement machines.

13. On December 13, 1977, the applicant applied for a corrected Certificate of Occupancy in the name of Denmark Publications, Incorporated. The Zoning Administrator, by letter dated February 27, 1978, disapproved the application since the proposed use was a sexually oriented business and must have the approval of the Board.

14. On March 15, 1978, the applicant filed the subject application with the Board.

15. The subject businesses was established in 1958 and was the first such business establishment on the subject 14th Street. The two aforementioned sexually oriented business establishments antedated the subject establishment.

16. Mr. Nathan Shapiro and Mr. Jacob Kramer were parties in the subject business in 1958 to 1971. In 1971 Mr. Shapiro left the business. Mr. Kramer became the sole owner.

17. Denmark Publications, Incorporated was incorporated in District of Columbia on September 15, 1975. Jacob Kramer, his wife Ruby Kramer and Ely Altman constituted the three initial members of the board of directors. A statement from the office of the District of Columbia Department of Finance and Revenue, dated August 25, 1978, disclosed that the subject business is listed on their records as Jacob Kramer (sole proprietorship).

18. The Municipal Planning Office, by report dated August 9, 1978, recommended that the application be denied on the grounds that the requested special exception would adversely affect the use of neighboring properties. It confirmed that the right of the adult book store to operate at the subject location was not in question.

19. The chair ruled that the Dupont Circle Citizens Association was not a party to this proceeding since the subject property was not within its district and it had no authority to represent the Midway Civic Association.

20. The Chairman, Advisory Neighborhood Commission 2C and as representative of the Central Northwest Civic Association, opposed the application on the grounds that the subject business is deleterious to the neighborhood and that the BZA should enforce the aforementioned Z.C. Order No. 188, effective December 16, 1977.

21. The Board is required to give great weight to the "issues and concerns" expressed by the ANC. In addressing these items, the Board finds that the evidence establishes that the operator had a Certificate of Occupancy for the book store and the amusement machines from 1958 to 1971. Since 1971 the application for a new Certificate of Occupancy based on a change of ownership and to correct a prior mistake to include amusement machines is still pending. The Board finds that the subject application is not to be considered as a precedent regarding the application of the sexually oriented business regulations for two reasons. First, this application is brought as a special exception to change a non-conforming use, under Sub-section 7104.2. Second, the specific fact circumstances presented, including the pendency of an application for a Certificate of Occupancy which would be issued if the original applicant were still alive, distinguish the case from other cases which may be presented under the regulations adopted by Order No. 188.

CONCLUSIONS OF LAW AND OPINION:

The Board concludes that the applicant in this case is entitled to a certificate of occupancy to include mechanical amusement machines. The Board notes that the machines have been in operation continually since 1958, that a valid Certificate of Occupancy was in existence from 1958 to 1971, that a new Certificate of Occupancy was occasioned only because of changes in the nature of the ownership of the business, and that if it were not for the death of one of the owners and the assumption of ownership of the business by his wife, a Certificate of Occupancy would be issued based on a valid application made in 1971.

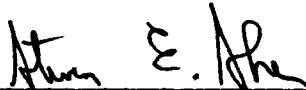
The Board concludes that the subject application is not governed by the regulations adopted by the Commission in Order No. 188 concerning sexually oriented business establishment. The present bookstore use is a valid non-conforming use, which could continue indefinitely under the Certificate of Occupancy issued June 24, 1971. The application before the Board, is properly brought under Article 71.

The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled by statute, and further concludes, for the reasons stated, that the equities in this case lie on the side of the applicant. It is therefore ORDERED that this application be APPROVED.

VOTE: 5-0 (Walter B. Lewis, Charles R. Norris, Chloethiel Woodard Smith, William F. McIntosh and Leonard L. McCants to GRANT).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 19 JAN 1979

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.